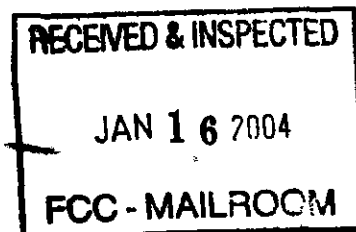


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MES E McGREEVEY
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
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PETER C. HARVEY
Attorney General

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January 15, 2004

VIA UPS NEXT DAY AIR MAIL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

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95-116

Re: I/M/O NEW JERSEY BOARD OF PUBLIC UTILITIES
PETITION FOR DELEGATED AUTHORITY TO
IMPLEMENT WIRELESS LOCAL NUMBER PORTABILITY

Dear Secretary Dortch:

Enclosed, please find an original and five (5) copies of a
Petition of the New Jersey Board of Public Utilities regarding the
above-referenced matter.

Please file-stamp one copy and return it to me in the enclosed
envelope. Thank you for your attention in this matter.

Respectfully Submitted,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: Marveta Kapoor
Bhaveeta Kapoor
Deputy Attorney General

cc: Attached Service List (via regular mail)

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Before the
Federal Communications Commission
Washington, D.C. 20554

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JAN 16 2004

FCC - MAILROOM

In the Matter of:

The New Jersey Board of Public Utilities)
Petition for Delegated Authority to) CC Docket No.
Implement Wireless Local Number Portability)

I. INTRODUCTION

The New Jersey Board of Public Utilities ("NJBP") hereby petitions the Federal Communications Commission ("FCC") for delegated authority to implement number portability to New Jersey's Mercer, Atlantic, Cape May and Cumberland County areas. Wireless local number portability ("LNP") became effective on November 24, 2003 enabling consumers to begin both wireless-to-wireless and intermodal porting in the 100 largest metropolitan statistical areas (MSAs).¹ Thus, consumers in seventeen of New Jersey's twenty-one counties are now able to benefit from LNP.² The NJBP requests that it be granted the authority to also make wireless LNP available effective immediately for the benefit of the residents of New Jersey's Mercer, Atlantic, Cape May and Cumberland county.

According to the North American Numbering Plan Administration ("NANPA") Numbering Resources Utilization and Forecast ("NRUF") report for the biennial period ending June 31, 2003, the six larger commercial mobile radio service ("CMRS") providers in New Jersey are present and offering cellular telephone services in the 609 and 856 area codes. The 609 and 856 area codes cover the New Jersey portion of the Philadelphia Metropolitan Statistical Area, a top 100 MSA, which includes Burlington, Camden, Gloucester and Salem counties. Furthermore, according to

¹ See *IMO Verizon Wireless Petition for Partial Forbearance from the Commercial Radio Services Number Portability Obligation*, WT Docket No. 01-184, and *Telephone Number Portability*, CC Docket NO. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972 (Released July 26, 2002) ("Verizon Wireless LNP Forbearance Order"); *Cellular Telecommunications & Internet Association v. FCC*, No. 02-1264 (D.C. Cir. June 6, 2003) (Dismissed in part and denied in part CTIA's appeal of the Commission's decision in the *Verizon Wireless LNP Forbearance Order*); See also *FCC Clears the Way for Local Number Portability Between Wireline and Wireless Carriers*, CC Docket No. 95-116, 2003 WL 22658210 (November 10, 2003 Press Release).

² 2000 U.S. Census, Metropolitan Area Boundaries, Counties and Central Cities, available at www.census.gov/census2000/state/states/nj.html ("2000 U.S. Census Maps").

the latest National Pooling Administration's Pooling Administration System ("PAS") reports, as of December 2003, the six largest CMRS providers in New Jersey are also pooling in these area codes. The underlying architecture that supports pooling also supports LNP³, therefore porting capability is already available in these four counties.

The 609 and 856 area codes also cover the Trenton, Atlantic-Cape May and the Vineland-Millville-Bridgeton MSAs which are not in the top 100 MSAs. According to the 2000 United States Census Bureau maps, Mercer, Atlantic, Cape May and Cumberland Counties represent the entire geography of these three MSAs. These four counties are also entirely within the 609 and 856 area codes. Furthermore, PAS reports show that, for the most part the same facilities used by CMRS providers to serve rate centers⁴ in these four counties are the same as those currently servicing the other rate centers within the Philadelphia and Monmouth-Ocean MSAs, both top 100 MSAs in New Jersey.

Given the significant presence of CMRS providers in these counties, the substantial consumer demand for wireless services in these areas, and because these CMRS providers have the capability to pool and port in these areas, the NJBPU requests that it be delegated the authority to require the CMRS providers to port in the four above-mentioned counties immediately upon approval of this Petition. The NJBPU also requests that henceforth any order or ruling issued by the FCC addressing numbering resource optimization, number portability and/or any other action affecting the top 100 MSAs include the four above-mentioned counties as part and parcel of the areas to be effected.

II. DISCUSSION

The FCC determined in its 1996 *Number Portability First Report and Order* that local exchange carriers ("LECs") and certain broadband CMRS providers operating in the 100 largest MSAs must offer LNP pursuant to a phased

³ *In the Matter of Number Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rule Making (Released March 31, 2000), 15 FCC Rcd 7574 ¶117.

⁴ A Rate center is "the geographic areas served by a wireline carrier's central office switch, and is used to determine the rating of calls to and from that switch as local or toll calls." *FCC Clears the Way for Local Number Portability Between Wireline and Wireless Carriers*, CC Docket No. 95-116, 2003 WL 22658210 (November 10, 2003 Press Release).

deployment schedule.⁵ Subsequently, in 1997, the FCC limited this requirement to the extent that LECs and covered CMRS providers were only required to deploy LNP within switches for which another carrier has made a specific request for the provision of LNP.⁶ Thereafter, the FCC extended until November 24, 2003, the deadline by which covered CMRS providers operating in the top 100 MSAs must offer number portability upon request by another carrier.⁷

The FCC considered expanding the list of the 100 largest MSAs to include areas in Consolidated Metropolitan Statistical Areas ("CMSAs") that otherwise would not be included on the list of the largest 100 MSAs.⁸ However, the FCC declined to expand that list and instead delegated to state commissions the authority to determine whether to extend pooling to areas within CMSAs that otherwise would not be included on the list of the largest 100 MSAs.⁹ The FCC found insufficient evidence to determine whether these areas have sufficient competition to justify extension of the MSA list to include CMSA areas. Instead, the FCC found that state commissions are in a better position to assess local conditions and determine whether to extend pooling to these areas.¹⁰

Thus, the FCC delegates the state commissions the authority to extend pooling to areas outside the largest 100 MSAs.¹¹ The FCC has also delegated authority to the state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis.¹² Furthermore,

⁵ *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 9393 (1996) ("*Number Portability First Report and Order*").

⁶ *Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7272 (1997) ("*Number Portability First Order on Reconsideration*"), clarified by *Clarification of Filing Deadline for Petitions for Reconsideration of the CMRS local number portability Forbearance Order*, 14 FCC Rcd 3908 (March 10, 1998).

⁷ See *In the Matter of Numbering Resource Optimization* CC Docket No. 99-200, *Telephone Number Portability, Western Wireless' Limited, Conditional Petition for Waiver of Local Number Portability and Thousands-Block Number Pooling Obligations*, 2003 WL 22763868 (Released November 24, 2003) ("*NRO-Western Wireless*") at ¶2, citing *Verizon Wireless LNP Forbearance Order* at 14985-14986.

⁸ *Fourth NRO Order* at ¶¶13, 20.

⁹ *Fourth NRO Order* at ¶21.

¹⁰ *Fourth NRO Order* at ¶21.

¹¹ *Fourth NRO Order* at ¶21.

¹² *Telephone Number Portability*, CC Docket Nos. 99-200, 96-98 and 95-116, *Fourth Report and Order* in CC Docket No. 99-200 and CC Docket No. 95-116, and *Fourth Further Notice of Proposed Rulemaking* CC Docket No. 99-200, Released June 18, 2003 ("*Fourth NRO Order*") at ¶1.

the FCC has ordered that "CMRS carriers operating outside the top 100 MSAs must become LNP-capable upon request by May 24, 2004, or within six months of a request."¹³

Because LNP is now obligatory in seventeen New Jersey counties and the technology is now available to pool and port in all twenty-one of New Jersey's counties, these carriers have the capability and should be required to port in Mercer, Atlantic, Cape May and Cumberland Counties as they currently do in the other seventeen New Jersey counties. Additionally, the four counties in New Jersey not covered by the November 24, 2003 wireless number portability effective date are small in geography and are in close proximity or adjacent to each other. In fact, three of the four counties border at least one and in some cases two of the top 100 MSAs and in each county, there are up to three rate centers that have two or more (and in one case five) wireless service providers offering cellular telephone services. These carriers are also pooling in these areas. Furthermore, in each of these rate centers there are a significant number of consumers currently availing themselves of cellular services.

More specifically, Mercer County is completely surrounded by three of the top MSAs with Philadelphia, Pennsylvania, to the southwest, Middlesex-Somerset-Hunterdon, New Jersey to the northwest and north to northeast; and Monmouth-Ocean, New Jersey, east to southeast. Mercer County is a major part and parcel of linking each of these communities of interests as well as the northeast corridor.¹⁴ Additionally, in the Mercer County area, there are currently six wireless service providers providing service out of three wireless rate centers. These rate centers include the Trenton rate center for example, which currently has five cellular carriers serving customers. Two of the five service providers serving the Trenton rate center are also pooling in the Trenton rate center. The other two rate centers are Lawrenceville and Princeton rate centers each of which has at least two cellular carriers offering service.

In the Atlantic County area, the same six wireless carriers provide cellular service out of two rate centers, with at least four of these six carriers each providing

¹³ NRO-Western Wireless at ¶2.

¹⁴ 2000 U.S. Census Bureau Maps.

cellular service out of the Pleasantville and the Atlantic City rate centers. In Cape May County, five of these six carriers provide cellular service out of two rate centers, with three carriers each providing service out of the Cape May Courthouse and the Wildwood rate centers. Additionally, in the Cumberland County area, there are five of the six wireless carriers above providing cellular services out of three rate centers, with four carriers offering service out of the Vineland rate center and two carriers each providing service out of the Bridgeton and Millville rate centers.

Moreover, the population in these counties is greater than the population in other counties that are included in the top 100 MSAs. The population in Mercer County was last reported as 350,761, although Mercer County was not included in the top 100 MSAs. Hunterdon County with a population of only 121,989 and adjacent to Mercer County, is in the top 100 MSAs. Thus, although Mercer County is geographically smaller than Hunterdon, it can be reliably inferred that consumer demand for cellular services would be greater in the Mercer County area, not only due to sheer size of the population, but also because of the more urban and more business environments located in Mercer County, including a significant portion of state government operations. The same is true for Atlantic, Cumberland and Cape May Counties that are not the smallest counties in New Jersey and are also on the border of the top 100 MSAs.¹⁵ Greater wireless competition is also evidenced by the significant presence of CMRS service providers and consumers in these areas.

The FCC has already clarified that with respect to wireless-to-wireless porting, "wireless carriers may not refuse a request to provide LNP from another wireless carrier on the basis of the lack of proximity of the requesting switch to the porting out carrier's switch."¹⁶ The FCC has also confirmed that "interconnection agreements are not required for wireless to wireless porting and that, in cases where wireless carriers are unable to reach agreement regarding the terms and conditions of porting, all such carriers must port numbers upon receipt of a valid

¹⁵ 2000 U.S. Census, Data for the State of New Jersey, Population, Housing Units, Area and Density Table.

¹⁶ Memorandum Opinion and Order, *IMO Telephone Number Portability- Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116 (Released October 7, 2003) ("*Wireless-to-Wireless Order*") at ¶2.

request from another carrier, with no conditions."¹⁷ Thus, the FCC has already provided guidance facilitating portability between carriers.

Based on the guidance provided in the FCC's *Wireless-to-Wireless Order*, the proximity of the four above-mentioned counties to the 100 Top MSAs, and the relatively small geography to be served, there are no evident impediments to making LNP immediately available to these four counties. Accordingly, the NJBPU seeks to extend the State's authority to require porting outside the top 100 MSAs immediately.

III. CONCLUSION

In light of the above, the NJBPU submits that the four New Jersey areas can be served with little or no additional burdens placed on carriers. The latest NANPA NRUF utilization reports show that there are a significant number of consumers currently availing themselves of cellular services in these areas. The NJBPU is of the view that these consumers should not be denied the benefits of increased competition. NANPA records also show that the six major CMRS providers are present in these areas and any objections or refusals to port in these areas would only serve to delay or obstruct open competition in these markets. Therefore, the NJBPU respectfully requests that it be delegated the authority to require LNP in these areas effective immediately upon approval of this Petition. The NJBPU also requests that henceforth any ruling or order issued by the FCC affecting New Jersey MSAs in the top 100 MSAs include Mercer, Atlantic, Cape May and Cumberland Counties.

¹⁷ *Wireless-to-Wireless Order* at ¶2.

WHEREFORE, for the reasons set forth above, the NJBPU requests that the FCC grant the NJBPU the delegated authority to require CMRS providers to port in Mercer, Atlantic, Cape May and Cumberland Counties immediately upon approval of this Petition. The NJBPU also requests that any order or ruling issued by the FCC addressing numbering resource optimization, number portability and/or any other action affecting the top 100 MSAs include these four counties as part and parcel of the areas to be effected.

Respectfully submitted,

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Board of Public Utilities

Dated: 1/15/04

By: Bhaveeta Kapoor
Bhaveeta Kapoor
Deputy Attorney General